

IN THE SUPREME OF MISSOURI

BONZELLA SMITH, *et al*)
)
Respondent Cross Appellants)
vs.) Supreme Court No.SC92646
)
TIF COMMISSIONERS, *et al.*,) Appeal No. ED95733
)
Appellants.) Appeal from the Circuit Court of
) St. Louis City, Missouri
) Case # 0922-CC9379) Hon. Robert Dierker,
) Jr
) Division 18
)
) On Transfer from the Missouri
) Court of Appeals, Eastern District

**SUBSTITUTE
REPLY BRIEF OF RESPONDENTS CROSS APPELLANTS
BONZELLA SMITH AND ISAIAH HAIR**

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§99.810 **p. 10, 11**

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ARGUMENT (Follows Northside Reply Brief)

II THE TRIAL COURT ERRED IN RULING THAT THE REDEVELOPMENT ORDINANCES LACKED A REDEVELOPMENT PROJECT AND THEREFORE DID NOT SATISFY THE TIF ACT BECAUSE THE TRIAL COURT’S NEW DEFINITION OF A REDEVELOPEMENT PROJECT AS “A SPECIFIC PLAN OR DESIGN” IS CONTRARY TO THE BROAD DEFINITION OF REDEVELOPMENT PROJECT UNDER AND THE INTENT OF SECTION 99.805(14) OF THE TIF ACT IN THAT THE TIF ACT REQUIRES ONLY “ANY DEVELOPMENT PROJECT” AND THE REDEVELOPMENT ORDINANCES INCLUDED A REDEVELOPMENT PROJECT WITHIN THE MEANING OF THE TIF ACT

Appellant Northside continues arguing “*phased long term large scale redevelopment projects*” as if such redevelopments should be treated differently under the statute where no such statutory language supports that concept. Appellant Northside uses this argument to suggest their redevelopment project can be in part written into their agreement with the City and thus escape the statutorily requires scrutiny of the TIF Commission (Appellant’s Reply Brief p.8) ...*a project of this magnitude.*” (Appellant’s Reply Brief p. 9)

Where §99.805(15) defines redevelopment costs it is not an either or proposition as to redevelopment project. Such definition cannot be construed to mean the

redevelopment plan may constitute a redevelopment project. (Appellant's Reply Brief p. 10-11)

Appellant Northside continues arguing **Shelbina** was decided on the failure to have a developer in place (Appellant's Reply Brief p. 11) when it is clear **Shelbina** was decided on its failure of a redevelopment project.

It is clear from the plain language of the statute that the legislature contemplated a municipality must take the step of either: (1) approving a redevelopment project; or (2) undertake acts that establish a redevelopment plan and a redevelopment project prior to enacting TIF ordinances deficiencies **City of Shelbina v Shelby County** 245 S.W.3d 249, 253 (2008)

It is clear from the excerpts cited that the City did not have any specific redevelopment projects approved nor had undertaken acts to establish a redevelopment project as required under Section 99.845.1. Since Section 99.845.1 contemplated the adoption of a redevelopment project prior to enactment of TIF ordinances, and in light of the absence of a redevelopment project at that time, we deem Ordinances No. 1094 and No. 1095 void ab initio. Therefore, we need not address the County's lengthy list of other alleged deficiencies **City of Shelbina v Shelby County** 245 S.W.3d 249, 253-254 (2008)

Additionally, Appellant Northside maintains its position this Court should consider those portions of their alleged redevelopment project which they admit, over and over, only appear in the Redevelopment Agreement between Northside and the City should satisfy the statutory requirements of a redevelopment project; that this Court should completely ignore those portions of the enabling 99.800, et seq requiring the redevelopment project be approved by the TIF Commission and brought before the public prior to ordinance consideration. Despite the plain language of the statute Appellant Northside refers to this requirement as “...*a red herring*. (Appellant’s Reply Brief p. 11)

Appellant Northside’s defense of their position in this regard further points to their reliance upon their alleged redevelopment project being almost entirely within the pages of their Redevelopment Agreement. . (Appellant’s Reply Brief p. 12) and because they had “...*advised the TIF Commission it intended to execute a Redevelopment Agreement with the City*” such advisement therefore satisfies the statute. This consisted of an undated undocumented discussion with the TIF Commission “...*contemplating the execution of a redevelopment agreement committing Northside to the performance of those projects.*” (Appellant’s Reply Brief p. 11)

Simply stated, the Redevelopment Ordinances identified a redevelopment project that satisfied the TIF Act and, although the trial court was wrong to re-define “redevelopment project”, the Redevelopment Agreement identified a project that satisfied the trial court’s interpretation, too. (Appellant’s Reply Brief p. 20)

Together these represent admissions on Appellant Northside's part of noncompliance with the statute. Cite requires presentation to Commission and public.

Prior to the adoption of an ordinance proposing the designation of a redevelopment area, or approving a redevelopment plan or redevelopment project, the commission shall fix a time and place for a public hearing as required in subsection 4 of section 99.820....

After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, changes may be made to the redevelopment plan, redevelopment projects or redevelopment areas without a further hearing

§99.825.1

Notice of the public hearing required by section 99.825 shall be given by publication and mailing.... **§99.830.1**

The notices issued pursuant to this section shall include the following:

- (1) The time and place of the public hearing;*
- (2) The general boundaries of the proposed redevelopment area or redevelopment project by street location, where possible;*
- (3) A statement that all interested persons shall be given an opportunity to be heard at the public hearing;*

(4) A description of the proposed redevelopment plan or redevelopment project and a location and time where the entire plan or project proposal may be reviewed by any interested party;

(5) Such other matters as the commission may deem appropriate. §99.830.2
A municipality, either at the time a redevelopment project is approved or, in the event a municipality has undertaken acts establishing a redevelopment plan and redevelopment project and has designated a redevelopment area..., may adopt tax increment allocation financing by passing an ordinance §99.845.1

Further, Appellant Northside confuses the purpose of the TIF which is designed to support a redevelopment project by reducing the costs of infrastructure in and around the redevelopment project. Under Appellant Northside's reading, the infrastructure development is the redevelopment project. In conjunction with this misapplication of the TIF purpose Appellant Northside further believes, apparently, the TIF funding can be used to demolish and rehabilitate buildings. . (Appellant's Reply Brief p. 13, 22-23)

Tax incremental financing projects within an economic development area shall apply to and fund only the following infrastructure projects:
highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks and any other similar public improvements, but in no case shall it include buildings. §99.825.3

If as stated above that Tax incremental financing's sole purpose is to fund only infrastructure projects then under Appellant Northside's position any development project can be based solely on the concept that the project is merely an infrastructure project with absolutely no intention of building or developing any other structures.

III THE TRIAL COURT ERRED IN RULING THAT THE REDEVELOPMENT ORDINANCES DID NOT SATISFY THE TIF ACT BECAUSE THE ORDINANCES LACKED A COST BENEFIT ANALYSIS REFERABLE TO A SPECIFIC PROJECT BECAUSE THE TIF ACT DOES NOT REQUIRE A COST BENEFIT ANALYSIS IN CONNECTION WITH INDIVIDUAL REDEVELOPMENT PROJECTS; RATHER RSMo §99.810.19(5) REQUIRES A COST BENEFIT ANALYSIS OF THE REDEVELOPMENT PLAN AS A WHOLE AND THE REDEVELOPMENT ORDINANCES SATISFIED THE TIF ACT IN THAT THEY INCLUDED A COST BENEFIT ANALYSIS OF THE PLAN AS A WHOLE

Appellant Northside argues contrary to it's own interests that Northside did in fact submit a redevelopment project but later argues no redevelopment project need be presented until Northside applies to the City for the TIF.

Here Appellant Northside insists no redevelopment project need be identified as distinct from the Redevelopment Plan. Thereafter Appellant Northside argues no redevelopment project need be submitted to any other entity other than the City upon application for the TIF. Appellant Northside in so arguing, tacitly admits it has no redevelopment project and no requirement to submit a redevelopment project up to and including all periods just prior to requesting the TIF from the City. (Appellant's Reply Brief p. 16-19)

However, contrary to this position are the number of statutory references stating the specific requirement of a redevelopment project and when and to whom it shall be submitted.

No redevelopment plan shall be adopted by a municipality without findings that: The estimated dates, which shall not be more than twenty-three years from the adoption of the ordinance approving a redevelopment project within a redevelopment area, of completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated, provided that no ordinance approving a redevelopment project shall be adopted later than ten years from the adoption of the ordinance approving the redevelopment plan under which such project is authorized§99.810.1(3); see also §99.820, §99.845.1

CONCLUSION

There must be a redevelopment project put before the TIF Commission and held up for public comment and examination prior to passage of any ordinance in which TIF may be utilized.

Any redevelopment project brought before the TIF Commission, orally, on an un-given date at an unspecified period insufficiently satisfies the statutory requirement. Likewise such oral presentation, having no supporting evidence of such act actually occurring does not satisfy the statutory requirements.

Further, any representation of a redevelopment project orally submitted that “contemplates” inclusion in a future redevelopment agreement, during said oral presentation unavailable at that time, unseen, presumably unwritten, and un-approved cannot satisfy the statutory mandate.

That even without the alleged “narrow” definition of redevelopment project, Appellants failed to submit a redevelopment project.

Appellants submitted nothing that can be construed as a redevelopment project supported in fact or law.



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CERTIFICATE OF COMPLIANCE AND SERVICE

This substitute Reply Brief complies with the requirements fo Rule 84.04. This Brief contains 1,514 words (excluding the cover page signature block and contents and table of authorities) as predetermined by Microsoft Word. It has been scanned and is virus free.

A copy of this Brief was served upon all counsel of record as registered users of the Court's electronic filing system upon it being filed with this Court by means of electronic filing system on September 28, 2012

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